possible to construct a hoarding which could not protrude into the land of the plaintiff because of insufficient space between the building and the plaintiff's land.

When cross-examined by Datuk S. P. Seenivasagam the first defendant says that if the building was 10 feet from the boundary, hoarding could be constructed without encroaching on the plaintiff's land. In answer to further question put to him that he could not build effective hoarding because he built 2 feet away from the boundary, the first defendant replies that there was a way to prevent damage but because the plaintiff extended the height of his fencing, he was not able to do anything.

By-law 46 requires a builder to take proper precautions to protect the public when building operations are being carried on. To comply with the by-law the builder is required to construct a strong hoarding round the building. Any such hoarding must, if it is to serve as a protection to the public, not only be strong but effective. The first defendant says that he cannot comply with such requirement because there was insufficient room to construct the hoarding. Is that sufficient reason to relieve the first defendant from placing the hoarding? I firmly believe that that is not. The first defendant himself had chosen to construct the building so close to the boundary of the plaintiff's land. It is therefore for him to contrive means of compliance with the by-law. I appreciate the fact that the first defendant's failure to comply with the by-law was to some extent contributed by the plaintiff's objection to those wooden structures protruding into his land. Why shouldn't he object? It is, I think, perfectly within his right to raise the objection and there is no earthly reason why he should be blamed for wanting to protest not only his property but the safety of his family. Looking at all these as a whole I do not hesitate to say that the first defendant's failure to comply with the statutory requirement stems mainly from the very fact that he had no room whatever left on his side of the land for him to place a proper and effective hoarding.

To my mind, the first defendant has clearly committed a breach of by-law 46 of the Town Boards Enactment in that he had failed to construct any or any effective hoarding sufficient to protect the public. Furthermore he had failed to take proper steps to comply with by-law 46. From the circumstances of this case I am further of the view that the first defendant was also negligent.

As for damages suffered by the plaintiff, I am inclined to agree with the first defendant's counsel that the plaintiff has not given sufficient particulars of the damage. However, on the evidence produced before this court, I am satisfied that the plaintiff has proved that there was some damage to the old expanded metal fence for which he had to repair costing him around $200. I am also satisfied that there was some damage to the roof of the plaintiff's house which he repaired incurring some $825. From the testimony of Encik Abdul Hamid, a civil engineer, it is further apparent that dust and parts of brick had fallen into the plaintiff's compound when building operations were being carried on. It is reasonable to allow some of the expenses incurred by the plaintiff as labour charges for the removal of the articles such as broken bricks, stones, cement plasters, etc. I award a sum of $480.

For reasons which I have stated above I would therefore enter judgment for the plaintiff in regard to his claim against the first defendant in the sum of $1,505 and costs. I also allow 5% interest per annum with effect from January 1, 1966.

The claim against the second defendant is dismissed with costs.

Claim dismissed.

Solicitors: *Williams & Tennakoon; Jackson & Masacorale; S. Seenivasagam & Sons.*

HARBANS KAUR & ANOR. v. LO KUM SANG

[F.C. (Azmi L.P., Suffian and Ali F.JJ.) October 24, 1972]

[Kuala Lumpur — Federal Court Civil Appeal No. 30 of 1972]

Damages — Award — Contributory negligence — Interest on damages.

This was an appeal from the decision of the High Court (reported at [1972] 2 M.L.J. 196) wherein it was held that the respondent was 75% to blame for the accident which caused the death of the deceased and that the deceased was contributorily negligent to the extent of 25%. The court also disallowed interest. The appellants, administratratrix and co-administrator of the estate of the deceased, appealed to the Federal Court.

Held, allowing the appeal: (1) the finding of 25% contributory negligence on the part of the deceased should be set aside and the appellants do recover from the respondent the sum of $17,280 as general damages and the sum of $1,100 as special damages;

(2) the general damages do bear interest at the rate of 6% per annum from January 22, 1971 to March 10, 1972 and the special damages do bear interest at the rate of 3% per annum from February 25, 1969 to March 10, 1972.

FEDERAL COURT.

David Tay Seow Hai for the appellants.

Anwar bin Ismail for the respondent.

The Federal Court in this appeal did not deliver a written judgment.

Appeal allowed.

Solicitors: *Murphy & Dunbar; Shearn Delamore & Co.*